

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

AC ERECTORS, INC. &
DG ERECTORS, INC.

and

Case Nos. 9-CA-34674-1, -2
9-CA-34482-1, -2, -3

INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL AND
ORNAMENTAL IRON WORKERS,
LOCAL 44, AFL-CIO

Deborah Jacobson, Esq.,
of Cincinnati, Ohio,
for the General Counsel.
Joseph M. D'Angelo, Esq.,
of Toledo, Ohio,
for the Charging Parties
Virgil D. Getliam, pro se,
for the Respondent.

BENCH DECISION

Statement of the Case

RICHARD H. BEDDOW, Administrative Law Judge. This matter was heard in Cincinnati, Ohio on October 8, 1997. The proceeding is based upon a charge filed by the Union on December 18, 1996, and the Regional Director's consolidated complaint dated March 14, 1997 which alleges that the Respondent violated Section 8(a)(1)(3) and (5) of the National Labor Relations Act by failing and refusing to furnish the Union with information that it had requested, by repudiating the collective-bargaining agreements it had entered into with Local 44 and Local 290 of the Union and by terminating employees Tom Doerflein and Mark Milholland because they would not accept employment with the Respondent's newly created non-union, alter ego.

At the close of hearing, I delivered a Bench Decision, pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations, which found that the Respondent has engaged in the unfair labor practices alleged and ordered appropriate remedial action designed to effectuate the policies of the Act.

In accordance with the provisions of Section 102.45 of the Board's Rules and Regulations I certify the accuracy of pages 69 through 73 of the transcript which pages contain the decision and I hereby file with the Board a certified copy of those pages, which otherwise are attached hereto as Appendix A.

Conclusions of Law

1. Respondent, AC Erectors, Inc., and its alter ego DG Erectors, Inc., is an Employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing to furnish the Union with requested information that is relevant to administering the collective-bargaining agreements between the Respondent and the Union Locals and by attempting to repudiate its separate agreements with Local 44 and Local 290 of the Union, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d), and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

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4. By terminating employees and Union members Tom Doerflein and Mark Milholland because it went out of business as a Union company and they would not accept employment as non union employee of the Respondent's alter-ego non union company, the Respondent has violated Section 8(a)(3) and (1) of the Act.

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Remedy

Having found that Respondent has engaged in certain unfair labor practices, the recommended order requires Respondent to cease and desist therefrom and to take the following affirmative action designed to effectuate the policies of the Act.

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Respondent will be ordered to offer reinstatement to Tom Doerflein and Mark Milholland and to make them whole as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), commencing with the Section (10)(b) period, including contributions and payments that the Union's contractual trust funds would have received, with interest computed in the manner prescribed by *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and *Merryweather Optical Co.*, 240 NLRB 1213 (1979). Finally, Respondent will be required to post the notice to employees attached as the Appendix at any jobsite currently in progress within the geographical jurisdiction of the applicable agreement and at its place of business in Hamilton, Ohio.

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Otherwise, the General Counsel does not seek any further disclosure of the information requested and it is not considered necessary that a broad Order be issued.

On these findings of fact and conclusions of law, on the entire record and pursuant to Section 10(c) of the Act, I issue the following recommended¹

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¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent AC Erectors, Inc., and its alter ego DG Erectors, Inc., its officers, agents successors, and assigns, shall:

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1. Cease and desist from:

(a) Repudiating its automatically renewed collective-bargaining agreements with International Association of Bridge, Structural and Ornamental Iron Workers, Local 44 and Local 290, AFL-CIO (except as provided in those agreements), and failing and refusing to recognize and abide by the terms of the agreements.

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(b) Refusing to bargain with the Union by failing and refusing to furnish requested information that is relevant to administering the applicable collective-bargaining agreements between the company and the Union Locals.

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(c) Causing the termination of any employee because they are members of the Union or to discourage employees from engaging in Union activities.

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(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the Policies of the Act:

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(a) Pay all delinquent fund payments that are mandatory subjects of bargaining, as required by the parties' relevant collective-bargaining agreements.

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(b) Within 14 days from the date of this Order offer Tom Doerflein and Mark Milholland full reinstatement to their former jobs or, if that job no longer exists, to a substantially equivalent position without prejudice to their seniority or any other rights or privileges previously enjoyed. and make Tom Doerflein and Mark Milholland whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

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(c) Within 14 days from the date of this Order, remove from its files and reference to the unlawful discharges of Tom Doerflein and Mark Milholland and within 3 days thereafter notify them in writing that this has been done and that the discharges will not be used against them in any way.

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(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay and fund payments due under the terms of this Order.

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(e) Within 14 days after service by the Region, post at its Hamilton, Ohio, Michigan facility copies of the attached noticed marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. November 7, 1997.

Richard H. Beddow, Jr.
Administrative Law Judge

² In this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX B

NOTICE TO EMPLOYEES

Posted by the Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT cause the termination of any employee because of their membership in the International Association of Bridge and Ornamental Iron Workers Local 44, AFL-CIO or any other union or for any activity protected by Section 7 of the Act.

WE WILL NOT repudiate the collective bargaining agreements with Local 44 and Local 290 of the Union (except as provided in those agreements) and fail and refuse to recognize and abide by the terms of those agreements.

WE WILL NOT fail and refuse to furnish the Union with requested information that is relevant to administering the applicable collective bargaining agreements between the Company and the Union Locals.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL within 14 days from the date of the Board's Order, offer Tom Doerflein and Mark Milholland full reinstatement to their former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole for any loss of earnings and other benefits resulting from their termination, less any net interim earnings, plus interest.

WE WILL within 14 days from the date of the Board's Order, remove from our files any reference to their termination and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the evidence of unlawful discharge will not be used against them in any way.

WE WILL within 14 days from the date of the Board's order, pay all delinquent fund payments that are mandatory subjects of bargaining, as required by the parties relevant collective-bargaining agreements.

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AC ERECTORS, INC., AND ITS ALTER EGO
DG ERECTORS, INC.

(Employer)

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Dated _____ By _____
(Representative) (Title)

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This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 550 Main Street, Room 3003, Cincinnati, Ohio 45202-3271, Telephone 513-684-3663.

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